

LAW OFFICES
SMITHWICK & BELENDIUK, P.C.

1990 M STREET, N.W.
SUITE 510
WASHINGTON, D.C. 20036
TELEPHONE (202) 785-2800
FACSIMILE (202) 785-2804
WWW.FCCLAW@FCCWORLD.COM

GARY S. SMITHWICK
ARTHUR V. BELENDIUK

DIRECT DIAL NUMBER:

December 14, 1998

COUNSEL

WILLIAM M. BARNARD
JAMES K. EDMUNDSON
ROBERT W. HEALY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

DEC 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

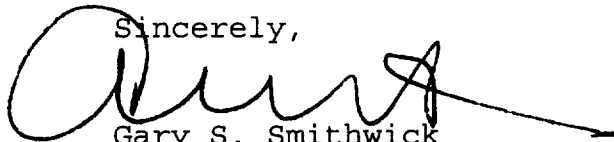
In re: MM Docket No. 98-155

Dear Ms. Salas:

There are enclosed herewith on behalf of our client, Ralph Tyler, the original and four copies of (1) a Motion to Accept Response, and (2) the Response of Ralph Tyler, to be associated with the above referenced Docket.

Please direct inquiries concerning this filing to the undersigned.

Sincerely,



Gary S. Smithwick
Arthur V. Belendiuk
James K. Edmundson

Enclosure

cc with enclosure: Mr. Glenn Greisman, FCC Room 332*
Compliance and Information Bureau, Room 734*
Mr. James D. Wells, Dallas Office, Compliance
and Information Bureau
Service List

*By Hand

No. of Copies rec'd 0+4
List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
DEC 14 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-155
(Table of Allotments))	RM-9082
FM Broadcast Stations)	RM-9133
Alva, Mooreland, Tishomingo,)	
Tuttle, and Woodward, Oklahoma)	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

RESPONSE OF RALPH TYLER

Gary S. Smithwick
Arthur S. Belendiuk
James K. Edmundson
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., #510
Washington, D.C. 20036
(202) 785-2800

December 14, 1998

Table of Contents

	Page
I. Introduction and Summary of Argument.....	1
II. Chisholm Trail's Reply Comments.....	2
III. Chisholm Trail's Supplement to Reply Comments..	8
IV. Chisholm Trail's Opposition to Statement For The Record.....	12

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-155
(Table of Allotments))	RM-9082
FM Broadcast Stations)	RM-9133
Alva, Mooreland, Tishomingo,)	
Tuttle, and Woodward, Oklahoma)	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

RESPONSE OF RALPH TYLER

Ralph Tyler (hereafter Tyler), licensee of Station KTSH(FM), Tishomingo, Oklahoma, by his attorneys, hereby responds to (1) the Reply Comments of Chisholm Trail Broadcasting Co., Inc. (hereafter Chisholm Trail) filed November 3, 1998, (2) the Supplement to Reply Comments, filed November 12, 1998, and (3) the Opposition to Statement for the Record filed November 25, 1998, in the above referenced proceeding.

I. Introduction and Summary of Argument

1. In its Reply Comments, Chisholm Trail alleges new facts and makes new arguments which are either 1) utterly irrelevant to the disposition of this rule making proceeding, or 2) by the exercise of ordinary diligence, should have been included in its Comments filed October 19, 1998. Chisholm Trail also combines in the same pleading requests "requiring action by any person ...

pursuant to delegated authority ... with requests for action by [another] person ... acting pursuant to delegated authority" in express violation of Section 1.44 of the Rules.

2. In its Supplement, Chisholm Trail alleges facts, which by the exercise of ordinary diligence, should have been included in its Reply Comments. Chisholm Trail's Supplement and its Opposition to Statement for the Record also contain scandalous accusations violative of the good faith pleading requirements of Section 1.52 of the Rules.

3. Chisholm Trail's Reply Comments, the Supplement thereto and its Opposition to Statement for the Record should be summarily dismissed or returned without consideration by the Commission. If the Commission considers Chisholm Trail's pleadings, despite these procedural derelictions, it should also consider the facts and arguments set forth in this Response.

II. Chisholm Trail's Reply Comments

4. In its Reply Comments, Chisholm Trail for the first time alleges that (1) in "a desperate attempt to effectuate his reallocation proposal, Tyler elected to take KTSH off the air for the sole purpose of permitting [non-commercial FM Station KAZC, Tishomingo] to commence program tests"; (2) in "the process of doing so, Tyler made a series of material misrepresentations to the Commission concerning the operation of both stations"; (3)

"because Tyler has attempted to deceive the Commission concerning the operation of KTSH and KAZC in an effort to obtain a grant of his proposal to move KTSH from Tishomingo to [Tuttle, Oklahoma], Tyler's rulemaking petition should be denied ..., program test authority for Station KAZC should be revoked, and the Commission should issue an order directing Tyler and [the KAZC permittee] to show cause why their respective authorizations for Stations KTSH and KAZC should not be designated for a revocation hearing"; and (4) in "the unlikely event the Commission elects to consider Tyler's proposal on its merits, Tyler's reallocation proposal should be denied because it fails to comply with the requirements of Section 1.420(i) of the Commission's rules" (Chisholm Trail Reply Comments, Summary of Argument).

5. South Central Oklahoma Christian Broadcasting, Inc. (hereafter South Central) is the permittee of non-commercial FM broadcast station KAZC, Tishomingo. Its construction permit was granted October 11, 1997. By letter, dated September 29, 1998, South Central advised the Commission that KAZC had commenced program tests and on October 2, 1998, KAZC's license to cover application (BLED-981002KA) was received by the Commission. By letter, dated October 1, 1998, and received by the Commission October 6, 1998, Tyler advised the Commission that KTSH had

temporarily suspended operations on September 28, 1998 (see Chisholm Trail's Reply Comments, pp. 4-6).

6. All of the operative events upon which Chisholm Trail bases the allegations contained in its Reply Comments occurred well before the October 19th deadline for the filing of comments in this proceeding. Chisholm Trail does not aver when it first learned that KTSH had suspended operations and KAZC had commenced operations. Apparently, however, Chisholm Trail did not commence the investigation which led to its charges until circa October 24, 1998 and after the comment deadline (Chisholm Trail Reply Comments, p. 7, Attachment E, p. 3).

7. The Commission should summarily dismiss Chisholm Trail's Reply Comments without consideration of its merits because it contains wholly new and previously unasserted allegations of fact which, in the exercise of ordinary diligence, should have been contained in its original Comments. Industrial Business Corp., 40 FCC 2d 69, 26 RR 2d 1447 (1973) ("To allow the reply to thus serve the purpose of the original petition would be to either (a) effectively render meaningless provisions in the rules for a fair opportunity by another party to respond to allegations or (b) compel the addition of supplementary pleadings not ordinarily contemplated by the rules." 26 RR 2d at 1449-50); Milam & Lansman, 4 RR 2d 463 (1964) ("Strict compliance with

these procedural requirements is essential to promote the efficiency of our adjudicatory functions and to ensure fair consideration of properly filed pleadings." 4 RR 2d at 466); and Swanco Broadcasting, Inc., 48 FCC 2d 1227, 31 RR 2d 841 (1974) ("To condone such conduct by allowing petitioners' reply pleading to serve the purpose of [a] petition to deny would, in our view, render meaningless our regulations which ensure a fair opportunity for licensees to respond to timely objections ... and promote the orderly and expeditious dispatch of the Commission's business." 31 RR 2d at 846).

8. Chisholm Trail's claim that Tyler's rule making proposal fails to comply with Section 1.420(i) of the Rules also should have been but was not set forth in Chisholm Trail's original Comments. This procedural dereliction is especially egregious because its argument is premised upon misapprehensions of fact and law (See annexed Engineering Statement of William G. Brown). FM Broadcast stations (Short-Spacing Using Contour Protection), 4 FCC Rcd 1681, 65 RR 2d 1651 (1989) (In allowing short-spacing using contour protection for application purposes, the Commission affirmed that "no change is made in the current FM channel allotment process, under which proposals for new channel allotments must meet minimum distance separations with respect to

other co-channel and adjacent channel stations." 65 RR 2d at 1651-52).

9. Chisholm Trail's allegations are not only procedurally defective, they are utterly irrelevant to the disposition of this rule making proceeding. Tyler donated his transmitter and transmission line and studio equipment to South Central and made available his staff, studio/transmitter site and program service to enable KAZC to commence operations.^{1/} Contrary to Chisholm Trail's claim, it is simply not impermissible for a commercial station to provide assistance to a non-commercial station. On the contrary, both the Congress and the Commission have

^{1/} When Tyler embarked on this project, he was advised that the removal of KTSH from Tishomingo should not be a bar to favorable action if a replacement service could be located. Having purchased KTSH from South Central in May 1996, Tyler inquired as to whether South Central would be interested in operating a noncommercial educational FM station at Tishomingo to replace KTSH when it moved to Tuttle. South Central advised that it was still interested in offering broadcast service to the community. Tyler agreed to assist South Central in obtaining a construction permit and to donate the KTSH facilities to South Central. South Central obtained the construction permit, and call letters KAZC were assigned. When the Commission released its Notice of Proposed Rule Making ("NPRM") in this docket, Tyler fulfilled his pledge to help KAZC begin operations by donating to South Central the KTSH transmitter, transmission line and studio equipment and KAZC began operations with the same program service which KTSH had been providing. By letter, dated October 1, 1998, Tyler inaccurately stated to the Commission that KTSH had temporarily suspended operations "due to antenna failure" (Declarations of Ralph Tyler and Randy Mullinax annexed hereto). Tyler anticipates that KTSH will resume operation with replacement equipment by the end of the year.

encouraged such assistance. Children's Television Programming (Revision of Programming Policies), 11 FCC Rcd 10660, 3 CR 1385, 1425 (1996).

10. Equally irrelevant are Chisholm Trail's charges that on October 30, 1998, its consultant determined that the KAZC antenna was located 68 meters rather than 77 meters above ground, that the KAZC antenna had an upward beam tilt of approximately 3 degrees, and that a visual inspection of the KTSH antenna revealed no physical damage of any kind (Chisholm Trail Reply Comments, pp. 7-9). None of these claims have any bearing whatever on whether the public's interest would be served by the reallocation of Channel 259C3 from Tishomingo to Tuttle and the modification of KTSH's license to specify Tuttle as its community of license (See annexed Engineering Statement of William G. Brown).

11. Finally, Chisholm Trail's charges of sham and fraud are reckless hyperbole and do not justify its request that not only Tyler's rule making proposal be denied, but that the Commission should revoke KAZC's program test authority and issue an order directing Tyler and South Central to show cause why their respective authorizations for Stations KTSH and KAZC should not be designated for a revocation hearing (Chisholm Trail Reply Comments, pp. 11-17).

12. Section 1.44 expressly provides that requests "requiring action by any person ... pursuant to delegated authority shall not be combined in a pleading with requests for action by [another] person ... acting pursuant to delegated authority." It is beyond peradventure that the Chief, Allocations Branch, is not charged with the responsibility for issuing revocation orders to broadcast licensees. Chisholm Trail's pleading which combines requests in a manner prohibited by 1.44 should be returned without consideration of the merits (see Section 1.44(e)). Better T.V., Inc. of Dutchess County, New York v. New York Telephone Co., 19 FCC 2d 612, 17 RR 2d 311 (1969).

III. Chisholm Trail's Supplement to Reply Comments

13. In its Supplement, Chisholm Trail asserts that by letter, dated October 27, 1998, Tyler, through counsel, advised the Commission that Station KTSH went off the air due to "unforeseen circumstances", that "Tyler's representation to the Commission that KTSH is off the air due to 'unforeseen circumstances' and his statements regarding the need to install new equipment for KTSH and the time that he claims is necessary to allow for the delivery and installation of such equipment, are completely false" and that Tyler's October 27, 1998 letter is a

"further misrepresentation of material facts, which was filed solely in an effort to support his pending rulemaking petition" (Chisholm Trail Supplement, pp. 2-4). Chisholm Trail's Supplement should be summarily dismissed as admittedly untimely and as violative of the good faith pleading requirements of Section 1.52 of the Rules.

14. In its Reply Comments, Chisholm Trail's engineering consultant reported that on October 30, 1998, he visited the KTSH main studio and was shown by the operator on duty a letter, dated October 27, 1998, addressed to the Commission and requesting "an additional 90 days of silence 'pending the installation of new equipment.'" (*Ibid*, Attachment E, p. 4). Chisholm Trail's consultant also observed that there "was no copying machine available in the main studio, so it became necessary for me to photograph any documents that I desired to copy." (*Ibid*.). Indeed, the consultant's report contains ten photographs, including six taken on October 30, 1998 (*Ibid*., Exs. 5-10).

15. Chisholm Trail provides no explanation why its consultant did not photograph the October 27, 1998 letter. Nor does it explain why its consultant could not have read to Chisholm Trail's counsel the five sentences contained in the body of the letter. Nor does Chisholm Trail explain why it could not have requested a copy of the letter from counsel for Tyler.

16. In its Reply Comments, at footnote 10, Chisholm Trail represents that the "undersigned counsel has made repeated efforts to obtain a copy of any further request that Tyler may have filed with the FCC seeking authorization for KTSH to remain off the air. As of this date [November 3, 1998], however, these efforts have been unsuccessful." This representation ignores inter alia that Chisholm Trail's consultant was shown a copy of the letter by a KTSH representative on October 30, 1998, that he had the means to make a photocopy thereof and that for whatever reason apparently he did not desire to do so.

17. The Commission should not permit Chisholm Trail to shift the blame for its dilatory conduct from itself to the Commission. Rather, the Commission should dismiss Chisholm Trail's Supplement because it is reasonable to infer that it was "interposed for delay" within the meaning of Section 1.52 of the Rules.

18. There is a second reason for dismissing Chisholm Trail's Supplement; that is, its assertion that Tyler made a "further misrepresentation of material facts" is a contrivance which has "no good ground to support it" within the meaning of Section 1.52 of the Rules. In his October 28, 1998 letter, Tyler's counsel (James K. Edmundson) (1) requested authority for Station KTSH to remain silent for a period of 90 days, (2)

advised that the licensee had suspended operations pending the installation of new equipment, (3) represented that it was presently anticipated that the equipment will be delivered in four to six weeks (i.e., November 24 - December 3, 1998) and that the installation can be completed within sixty days (i.e., by December 27, 1998), and (4) requested, however, authority to remain silent for ninety days (i.e., until January 27, 1999) "to allow for unforeseen circumstances".

19. Tyler's counsel did not represent to the Commission that KTSH was off the air due to "unforeseen circumstances". Rather, counsel represented that as of October 27, 1998, it was then anticipated that the new equipment installation could be completed within sixty days (i.e., by December 27, 1998), but that a ninety day silent authority was requested "to allow for unforeseen circumstances".

20. Chisholm Trail's argument to the contrary is a contrivance. Its accusation that Tyler made further material misrepresentations of fact, i.e., that KTSH is off the air due to unforeseen circumstances is "scandalous" and without "good ground to support it" within the meaning of Section 1.52 of the Rules. Chisholm Trail's allegation should be "stricken as sham and false" within the meaning of Section 1.52 of the Rules and upon referral to the Office of General Counsel, its attorneys should

"... be subjected to appropriate disciplinary action, pursuant to [Section 1.24 of the rules] for a willful violation of ..."
Section 1.52 or for the insertion of "scandalous" matter in Chisholm Trail's Supplement. Crescent Bay Broadcasting Co., 14 FCC 793, 6 RR 184, 188 (1950); City of New York Municipal Broadcasting System, 39 RR 2d 102 (1976); and Television Broadcasters, Inc. (KBMT), 1 FCC 2d 970, 6 RR 2d 293 (1965). As the Commission stated in KBMT, supra:

No licensee may lightly place in question the character qualifications of another licensee, and their counsel can be accorded no greater latitude in this area. We expressly disapprove of the course followed by counsel in this case, and in the future, we will not countenance such conduct.

IV. Chisholm Trail's Opposition to Statement for the Record

21. Chisholm Trail opposes Tyler's Statement for the Record because "any 'response' by Tyler to [Chisholm Trail's] Reply Comments and Supplement would constitute an unauthorized pleading under Section 1.415 of the Commission's rules", that "because Tyler is familiar with each of the exhibits attached to [Chisholm Trail's] reply pleadings, Tyler's claim regarding the length of [Chisholm Trail's] reply pleadings [i.e., that they exceed 90 pages in length] has no basis in fact" and that "the only reason Tyler has filed his Statement [footnote omitted] is that he needs

time to fabricate some plausible explanation -- which undoubtedly will involve lining-up witnesses who are under his influence or control -- in order to try and rebut the clear, convincing evidence presented in [Chisholm Trail's] reply pleadings that Tyler is guilty of fraud and misrepresentation" (Emphasis supplied) (Chisholm Trail Opposition, pp. 2,4).

22. Chisholm Trail is mistaken on all counts. First, Chisholm Trail ignores that the facts and matters recited in its November 3, 1998 Reply Comments, in the exercise of ordinary diligence, should have been set forth in its October 19, 1998 Comments and that the facts and matters recited in its November 12, 1998 Supplement, in the exercise of ordinary diligence, should have been set forth in its November 3, 1998 Reply Comments. Second, Tyler's alleged familiarity with each of the exhibits attached to Chisholm Trail's reply pleadings does not belie the fact that all together these papers exceeded 90 pages in length.

23. Third, Chisholm Trail's accusation that the "only reason Tyler has filed his Statement [footnote omitted] is that he needs time to fabricate some plausible explanation ..." is scandalous and even for Chisholm Trail exceeds the bounds of zealous advocacy. Chisholm Trail's allegation should be "stricken as sham and false" within the meaning of Section 1.52

of the Rules and upon referral to the Office of General Counsel, its attorneys should "... be subjected to appropriate disciplinary action, pursuant to [Section 1.24 of the rules] for a willful violation of ..." Section 1.52 or for the insertion of "scandalous" matter in Chisholm Trail's Opposition. Crescent Bay Broadcasting Co., supra; City of New York Municipal Broadcasting System, supra; and Television Broadcasters, Inc. (KBMT), supra.

Respectfully submitted,

RALPH TYLER



By: _____

Gary S. Smithwick
Arthur S. Belendiuk
James K. Edmundson
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., #510
Washington, D.C. 20036
(202) 785-2800

December 14, 1998

DECLARATION OF RALPH TYLER

I, Ralph Tyler, declare under penalty of perjury that to the best of my knowledge and belief the following information is true and correct.

I am the owner of KTSH (FM) Tishomingo, Oklahoma. I am the party responsible for the actions of my employees and I am fully prepared to bear the consequences of their actions.

I have known Randall "Randy" C. Mullinax for over twenty years. Over the years I have come to rely on his good judgment and technical expertise. In 1976 I hired him to be chief engineer of a station I owned at the time. Randy Mullinax was the chief engineer of the station during the approximately eleven years that I held a majority interest in that station. After I sold my interest in the station I continued to have contact with Randy Mullinax through a radio tower business I own. If there were any technical problems concerning placement of antennas or potential interference I would refer them to Randy Mullinax. In February 1998 Randy Mullinax was hired by Tyler Media Group, a company owned by my sons. Through Tyler Media Group, I have contracted for Randy Mullinax's engineering services for KTSH (FM).

I am seeking FCC approval to relocate KTSH from Tishomingo to Tuttle, Oklahoma. Before KTSH can be moved to Tuttle at least one other station had to be licensed to Tishomingo, Oklahoma. There was an FCC rule making comment deadline approaching on October 19, 1998, and I felt the best way to answer certain questions posed by the FCC in the rule making proceeding was to assist noncommercial educational station KAZC to get on the air by donating the KTSH transmitter, transmission line, and studio equipment and the engineering services necessary to complete the KAZC installation. It had always been my intent to donate this equipment to KAZC, but because of the FCC deadline I decided to do it sooner than I had planned.

On October 1, 1998, Randy Mullinax presented me with a letter for my signature notifying the FCC that KTSH was off the air. I signed the letter without discussing it with him. On October 29, 1998, an FCC inspector visited KTSH's studio and transmission facility. During his inspection of the facility, the FCC inspector called me. The questions the FCC inspector was asking were technical in nature and I did not possess the expertise to be able to answer them. I asked Randy Mullinax to join the conversation. Randy Mullinax and the FCC inspector then spoke about the technical facilities of KTSH. I believed Randy Mullinax was answering the FCC inspector's questions truthfully and accurately. After the conversation was completed, Randy Mullinax advised me that he had misled the FCC inspector. I called my communications attorney and advised him of what had just happened.

I did not know that misstatements were made until after the conversation with the FCC inspector. My office is approximately 100 miles from Tishomingo and I did not personally supervise the engineering work done at KTSH. In making this declaration I am in no way seeking to deflect responsibility for what happened. KTSH is my station and I am the party ultimately responsible for its operation. I should have paid more attention to what was written in

the October 1, 1998 letter. I should have been better informed as to the technical state of the KTSH facility. Had I done a better job I could have prevented this problem.

Executed this 11th day of December, 1998.


Ralph Tyler

DECLARATION OF RANDALL C. MULLINAX

I, Randall C. Mullinax, declare under penalty of perjury that to the best of my knowledge and belief the following information is true and correct.

Since 1969 I have been employed as an engineer at various radio and television stations and at Sprint PCS. In February 1998, I was hired by Tyler Media Group, Inc. as its director of engineering. Tyler Media Group has an agreement with Ralph Tyler pursuant to which I provide engineering services for Ralph Tyler's radio station, KTSH (FM), Tishomingo, Oklahoma.

Ralph Tyler wants to relocate KTSH (FM) from Tishomingo to Tuttle, Oklahoma. As I understand it, before KTSH (FM) could be moved to Tuttle, noncommercial educational station KAZC had to go on the air in Tishomingo. I also understand that it had always been Ralph Tyler's plan to donate the KTSH transmission line, transmitter and studio equipment to KAZC and to provide the engineering services necessary to complete the KAZC installation. Because of the FCC deadline this was being done sooner than originally planned.

In late September, 1998, the bottom bay of the KTSH antenna was removed and the KAZC antenna installed. The KAZC antenna was mounted at the KTSH location because at that time there was no tower lease agreement in place to permit KAZC to mount its antenna. This now has been rectified and the KAZC antenna has been mounted as specified in KAZC's construction permit.

I retuned the KTSH transmitter to KAZC's frequency and supervised the antenna crew that installed the KAZC antenna. On October 1, 1998 I drafted a letter for Ralph Tyler's signature advising the FCC that KTSH was off the air. Because one bay of the KTSH antenna was down and the antenna was not working to specifications, I wrote that KTSH was off the air due to antenna failure. I presented the letter to Ralph Tyler without discussing it with him.


On October 29, 1998, an FCC inspector visited the KTSH studio and transmitting facility. The FCC inspector called Ralph Tyler who asked me to participate in the telephone call. The FCC inspector wanted to know why KTSH was off the air. I told the FCC inspector that the bullet in the lower bay had failed and that as a result, I had called in a tower crew. I also told him that I had purchased a new bullet from a local surplus electronics dealer. The FCC inspector asked for the name and telephone number of the tower crew and the electronics dealer, which I provided.

After the telephone call with the FCC inspector, I called the tower company and the electronics dealer and asked them to verify what I had told the FCC inspector.

When the FCC inspector called I should have advised him of the true situation. Instead I panicked and perpetuated a false statement. I further compounded my mistake by calling the tower crew and the electronics dealer and asking them to verify a story I knew not to be true. I have been employed in the broadcast industry as an engineer for almost thirty years. I have

always been a good and conscientious employee and have never had any trouble with the FCC. In this one instance I failed to exercise the good judgement that has served me well during my career. I made a mistake that will never be repeated.

Executed this 10 day of December, 1998


Randall C. Mullinax

Technical Response
MM Docket No. 98-155
RM-9082, RM-9133
Tuttle, Oklahoma
December 1998

These Technical Comments are made on behalf of Ralph N. Tyler ("Tyler") licensee of KTSH Radio Station in response to Reply Comments made by Chisolm Trail Broadcasting Co. ("Chisolm Trail").

In its Technical Report Chisolm Trail states that a site could be located 2.34 km northwest of Tuttle, Oklahoma where Channel 259C3 could be used both at Tuttle and at Tishomingo. The Chisolm Trail Technical Report includes tabulated spacing studies showing Section 73.207 spacing required for Channel 259C3 at the Tuttle Allocation Point (Exhibit #5) and the "better" site as proposed by Chisolm Trail (Exhibit #7). Chisolm Trail totally ignores the fact that if either of these sites were utilized at Tuttle and Channel 259C3 was left in Tishomingo that a shortspace would be created to the KTSH-Construction Permit. This is shown in their own exhibits. From the Tyler allocation site at Tuttle, a 10.46 km shortspace would be created to KTSH and from Chisolm Trail's alternative site, a 11.72 km shortspace would be created to the KTSH Construction Permit. Chisolm Trail claims that Tyler is in violation of Section 1.402(I) of the Commissions Rules. This rule states "...In the course of a rule making proceeding to amend §73.202(b)..., the Commission may modify the license or permit of an FM.....station to specify a new community of license *where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.*" Tyler holds a valid license and a valid construction permit for KTSH. Tyler is both a

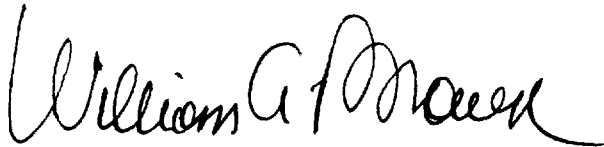
licensee and a permittee, therefore, the proposed allocation site is clearly mutually exclusive with the proposed rulemaking.

The Chisolm Technical Report even goes further to state: *".....This site is not mutually exclusive with the existing KTSH facility, due to intervening terrain. It can be demonstrated using 73.215 contour protection methodology."* The Commission's Rules clearly prohibit the use of Section 73.215 contour protection in rulemaking proceedings. In order for a channel to be assigned or re-assigned to another community the proposal must meet the distance spacing provisions of Section 73.207 and the requirement to provide a 3.16 mV/m contour over the community of license. A channel cannot be assigned using the contour to contour provisions of Section 73.215.

Chisolm Trail states that the new non-commercial FM station KAZC has mounted their FM antenna 9 meters lower than their construction permit specified. Additionally, the Chisolm Technical Consultant supplied pictures showing the bay and he determined that a 3° beam tilt was placed on the antenna. In order to determine if mechanical beam tilt was present a study would be required by someone located on the tower at or near the location of the bay and not standing on the ground several hundred feet away from the tower and antenna. KAZC had no interest in installing the antenna with any degree of beam tilt. KAZC installed a one bay antenna. A one bay antenna provides a broad vertical coverage pattern. A one bay antenna will provide a power gain of one from 80° to 110°. Due to this broad vertical signal the station's coverage would not change even if the bay were mounted with as much as plus or minus 10° of beam tilt.

Therefore, even if this bay were mounted at a 3° angle the effect on the station's coverage is not measurable.

Bromo Communications, Inc.

A handwritten signature in black ink, reading "William G. Brown". The signature is written in a cursive style with a large, stylized "W" and "B".

William G. Brown
Technical Consultant to Ralph Tyler

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on the 14th day of December, 1998, copies of the foregoing Response of Ralph Tyler were sent via Hand Delivery or Facsimile, pursuant to Section 1.4(h) of the Rules, to the following:

John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, D.C. 20554

Ms. Leslie K. Shapiro
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W. Room 565
Washington, D.C. 20554

Sherre D. House, President*
Classic Communications, Inc.
P.O. Box 1600
Woodward, OK 73802
(Facsimile No. 405-254-9102)

Kathleen Victory, Esquire
Andrew S. Kersting, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, VA 22209

(Counsel for Chisholm Trail Broadcasting Co., Inc. (KXLS))

Kathryn R. Schmeltzer, Esq.
Kevin M. Walsh, Esq.
Fisher Wayland Cooper Leader & Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006

(Counsel to FM 92 Broadcasters, Inc.)


Sherry L. Schunemann

*Via Facsimile